

JOHN W. BLACK ET AL.

IBLA 81-90, 81-91, 81-92,
81-93, 81-94

Decided April 6, 1982

Appeals from decision of the Montana State Director, Bureau of Land Management, denying protests to the designation of the Bitter Creek wilderness study area. MT-064-356.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Inventory and Identification--Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

2. Administrative Procedure: Adjudication--Administrative Procedure: Administrative Review--Appeals--Federal Land Policy and Management Act of 1976: Inventory and Identification--Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

APPEARANCES: Matthew W. Knierim, Esq., Robert Hurly, Esq., and Gordon T. White, Esq., of Glasgow, Montana, for appellants; Dale D. Goble, Esq., Office of the Solicitor, Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

John W. Black, et al., 1/ have appealed from a decision of the Montana State Director, Bureau of Land Management (BLM), published in the Federal Register, 45 FR 63560 (Sept. 25, 1980), denying protests to the State Director's determination dated March 28, 1980, and published in the Federal Register, 45 FR 24254 (April 9, 1980), which designated 59,112 acres of the Bitter Creek Unit MT-064-356 as a wilderness study area (WSA).

The Bitter Creek WSA is located within the Lewistown BLM District, approximately twenty-five (25) miles northwest of Glasgow, Montana. The wilderness inventory for this unit was conducted in advance of the statewide schedule because of potential conflicts with the proposed northern border leg of the Alaska natural gas transportation system. After the unit was inventoried for wilderness characteristics, BLM announced its proposed decision which indicated that portions of the unit were believed to possess wilderness characteristics and proposed the unit to become a WSA. Following public comment, BLM issued its final decision for the Bitter Creek unit.

[1] Section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976), provides for Secretarial review of "roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 1711(a) * * * as having wilderness characteristics described

1/ Identical statements of reasons have been submitted by the attorneys appearing in these cases on behalf of the following appellants:

81-90 Robert Hurly, Esq., on behalf of: John Black, Black Ranch, Inc.; Gene Etchart, Hinsdale Livestock Co., Inc.; Robert Westland, Westland Ranch, Inc.; Don Timm, Timm Ranch, Inc.

81-91 Robert Hurly, Esq., on behalf of: Leonard Langen, A. W. Pratt, Alex Morgan, Morgan Ranch, Inc.

81-92 Matthew W. Knierim, Esq., on behalf of Robert Rhode.

81-93 Matthew W. Knierim, Esq., on behalf of: James McIntyre, Lois McIntyre, Charles H. Brocksmith, Glasgow Area Chamber of Commerce & Agriculture, Louise Christiana, David Riffin, Thelma Riffin, Darrell Marsh, Herb Sukut, Don Potter, Margaret Potter, Gladys Silk, Dick Markle, Jim Markle, William Beede, Magnus Swanson, Bob Claypool, John Rosendahl, Robert McColly, Owen Funk, Junior Craig, Howard Porter, and John Brookie.

81-94 Gordon T. White, Esq., on behalf of Valley County, Montana.

in the Wilderness Act of September 3, 1964" and for recommendations to the President "as to the suitability or unsuitability of each such area or island for preservation as wilderness." The wilderness review of the public lands pursuant to FLPMA has been divided into three phases by BLM: Inventory, study, and reporting. (See BLM "Wilderness Inventory Handbook" (WIH) dated September 27, 1978, at 3.) The first phase is further divided into an initial and an intensive inventory stage. The initial inventory consists of the identification and evaluation of inventory units and a final decision regarding each unit, determining whether it clearly and obviously does not meet the criteria as a WSA or whether it may possibly meet such criteria. Those units which may possibly meet such criteria are subjected to an intensive inventory and a final decision is then made on which units to designate as WSAs.

BLM considered the characteristics of the lands in question to determine if they met the wilderness criteria as set forth in section 2 of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1976), which defines wilderness and lists wilderness characteristics as follows:

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

BLM carefully analyzed these specific aspects of the unit and determined that 59,112 acres of the area satisfied the requisite wilderness characteristics and was suitable for designation as a WSA. The remainder of the unit acreage, 21,032 acres, was eliminated from further wilderness review.

Appellants have taken issue with BLM's WSA determination, essentially arguing that the designation does not meet the requirements of Federal law, that the determination is not supported by factual findings,

and that the land in the unit does not meet the statutory definition of "wilderness." In their statements of reasons appellants list their point by point disagreement with the characteristics of the unit, concluding that the decision has ignored the public input of adverse comments and is arbitrary and capricious.

In light of our review of the record we find that there is little or no merit in these arguments challenging this WSA designation. Having considered each of appellants' factual assertions and BLM's response to each, we find that this WSA designation has not been shown to be arbitrary and capricious and is amply supported by the record. Appellants' statements of general conclusions and factual assertions are not supported by any detailed information to prove error in BLM's decision. At best, they merely point out areas of disagreement and reiterate factors that have been previously considered during the intensive inventory conducted by BLM. See City of Colorado Springs, 61 IBLA 124, 126-27 (1982); National Outdoor Coalition, 59 IBLA 291, 299-300 (1981).

From even the most cursory review, it is clear that BLM has prepared an extensive evaluation of the area in question which is well documented with the type of information needed for a proper review of wilderness characteristics. The record contains a detailed analysis of the unit in relation to each of the important criteria previously set forth herein, and more than adequately shows how BLM concluded the area qualifies in each respect for wilderness designation.

This Board has traditionally accorded considerable deference to the technical expertise of Departmental officers in our review of wilderness cases. As we originally noted in Richard J. Leaumont, 54 IBLA 242, 245, 88 I.D. 490, 491 (1981):

These evaluations are necessarily subjective and judgmental. BLM's efforts are guided by established procedures and criteria, and are conducted by teams of experienced personnel who are often specialists in their respective areas of inquiry. Their findings are subjected to higher-level review before they are approved and adopted. Considerable deference must be accorded the conclusions reached by such a process, notwithstanding that such conclusions might reach a result over which reasonable men could differ.

[2] Therefore, for an appellant to succeed on appeal, it is not enough to express disagreement with BLM's actions. An appellant seeking reversal of a decision to include or exclude land from a WSA must show that the decision below was premised either on a clear error of law or a demonstrable error of fact. Union Oil Co. (On Reconsideration), 58 IBLA 166, 171 (1981); Richard J. Leaumont, supra. Appellants have not done so in this instance.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

